IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3195 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHARAT RAMCHAND SHAMDASANI

Versus

PC VERMA, COMMISSIONER OF INCOME TAX, GUJARAT III

Appearance:

1. Special Civil Application No. 3195 of 2001

MR SN DIVATIA for Petitioner No. 1

MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 28/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The petitioner-individual has come before the Court challenging the order dated 28.3.2001 (Annexure "A") passed by the Commissioner of Income-tax, Gujarat-III, Ahmedabad, whereby the Commissioner (1) declared null and void the declaration filed in Form 1-A filed by the petitioner before him, (2) consequently cancelled and withdrew the certificate in From 2-A issued by him and (3) cancelled and withdrew the certificate in Form 3 issued on 25.3.1999.

2. On 28.12.1998, the petitioner filed declaration under Section 89 of the Finance (No. 2) Act of 1998 in respect of Kar Vivad Samadhan Scheme, 1998 read with Kar Vivad Samadhan Rules, 1998 (hereinafter referred to as "the Act", "the Scheme" and "the Rules" respectively) whereby for assessment year 1995-96 tax arrears outstanding as on 31.3.1998 were shown at Rs.7,381/- in relation to interest levied. The said declaration came to be accepted on 9.2.1999 and the declarant-petitioner was directed to make payment of Rs.3,691/- which the petitioner paid over within the prescribed time. As a consequence, on 25.3.1999, in Form 3 as prescribed under the Rules, a certificate for full and final settlement of tax arrears under Section 90(2) read with Section 91 of the Act in respect of the claim was granted by the respondent to the petitioner.

3. On 16.3.2001, the respondent issued a show cause letter under the Proviso to Section 90(1) of the Act and after considering the reply of the petitioner, passed the impugned order on 28.3.2001 (Annexure "A").

4. The main say of the petitioner is that the respondent has committed an error in cancelling and withdrawing the certificate by harping upon the non-declaration of penalty levied because, according to the petitioner, neither the Scheme nor the Rules and the prescribed form thereunder provided for a declaration in relation to penalty which was levied after determination of tax arrears on the cut off date i.e. 31.3.1998. Referring to the definition of `tax arrear' as given in Section 87(m) which reads as under,

"(m) "tax arrear" means -

(i) in relation to direct tax enactment, the amount of tax, penalty or interest determined on or before the 31st day of March, 1998 under that enactment in respect of an assessment year as modified in

consequence of giving effect to an appellate order but remaining unpaid on the date of declaration;"

it was submitted that tax arrear meant determination of the amount of tax, penalty or interest on or before 31.3.1998 and the same should also remain unpaid on the date of declaration. That in case of the petitioner, there was no amount of tax in arrear on 31.3.1998 and similarly there was no amount of penalty which would fall within the said definition in view of the fact that the penalty had actually been imposed vide order dated 29.9.1998. Therefore, the petitioner was perfectly justified in not showing the amount of penalty as part of the tax arrears and there was no question of holding that any material particular furnished in the declaration was false. Our attention was drawn to the proforma Form 1-A with special reference to column 5 which deals with `Details of tax arrears being offered for settlement', and thereafter to various sub-columns thereunder with special reference to (d), (e), (f) and (h). It was submitted that the case of the respondent to the effect that by not showing the amount of penalty levied in clause 5(d), the petitioner had submitted material particulars which were false was not borne out by either the provisions of the Act, the Scheme or the Rules and the form prescribed thereunder. Elaborating on the submission, it was submitted that what has to be taken into consideration and what was material for determination of validity of a declaration was the tax arrears determined as on 31.3.1998 and admittedly the penalty levied on 29.9.1998 did not form part of the same. It was further submitted that even if column 5(d) had been filled up as contended on behalf of the respondent, it would not have made any difference because the tax arrear comprises only an outstanding interest and as required under the provisions of Section 88(a)(iv), 50% of the said amount was required to be paid and admittedly the same had been computed by the respondent vide certificate in Form 2-A and was accordingly duly paid by the petitioner.

5. On behalf of the respondent, learned advocate Mr MR Bhatt raised a contention to the effect that the penalty proceedings which were subsequent to the date of determination of tax arrear viz. 31.3.1998 could not be taken into consideration for the purposes of immunity and in light of this position the declaration made could not be said to cover the said proceedings which would grant immunity by virtue of the provisions of Section 91 of the Act read with the Scheme.

6. In our view, it is not necessary to enter into the controversy as to whether the petitioner should be granted immunity or not, because that would depend on the provisions of the Act and the Scheme. The only controversy before the Court is as regards whether it could be stated that the petitioner had furnished any material particular in the declaration which was false. The undisputed facts are that the penalty order was made only on 29.9.1998. The penalty imposed thus could not form part of tax arrear as defined in Section 87(m) under the Scheme, as the same was not determined on or before the 31st day of March, 1998. Once this is the position, the requirement of column 5(d) will have to be read in the context of the opening portion of column 5 which states "Details of tax arrears being offered for settlement". Thus, the penalty which was levied in September cannot be offered for settlement as part of tax arrears determined before 31.3.1998 even if such penalty is outstanding on the date of declaration. If this position is clear, and we have no doubt about it, the impugned order dated 28.3.2001 made by the respondent cannot stand. The petitioner's declaration under the Scheme was in order and the Proviso to Section 90 of the Sceheme cannot be invoked against the petitioner.

7. The order dated 28.3.2001 (Annexure "A") passed by the respondent is hereby quashed and set aside and the respondent is directed to accept the declaration made by the petitioner and grant certificate which had already been otherwise granted before the impugned order had been made. The certificates issued in Form 2-A and Form 3 dated 9.2.1999 and 25.3.1999 shall stand revived as if they had never been cancelled as a consequence of our quashing the impugned order (Annexure "A"). Needless to state that the petitioner shall be entitled to all the consequential benefits under the Scheme in respect of matters covered in the aforesaid declaration made by the declarant-petitioner.

Rule is made absolute in the aforesaid terms with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-